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*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION**

**NICOLE GILILLAND, AN INDIVIDUAL,**

Plaintiff,

vs.

**SOUTHWESTERN OREGON  
COMMUNITY COLLEGE DISTRICT BY  
AND THROUGH ITS BOARD OF  
EDUCATION, AN OREGON COMMUNITY  
COLLEGE DISTRICT AND BOARD;  
SOUTHWESTERN OREGON  
COMMUNITY COLLEGE, AN OREGON  
COMMUNITY COLLEGE,**

Defendants.

Case No. 6:19-cv-00283-MK

**OBJECTIONS TO DEFENDANT  
SOUTHWESTERN OREGON  
COMMUNITY COLLEGE'S  
PROPOSED VERDICT FORM**

COMES NOW Plaintiff Nicole Gililland ("Plaintiff"), by and through her undersigned counsel, for her Objections to Defendant's Proposed Verdict Form, and states as follows:

1. Plaintiff objects to Defendant's proposed verdict outline regarding Claim 1: Title IX Deliberate Indifference Claim. Defendant incorrectly asserts that an appropriate person within SWOCC had to have been the one to harass Plaintiff. This is unsupported by any Title IX caselaw. The correct elements are that an appropriate person within SWOCC had to have actual knowledge of, and was deliberately indifferent to, harassment that was so

severe, pervasive, and objectively offensive that it deprived Plaintiff of educational opportunities or benefits. *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 650, 119 S. Ct. 1661, 1675 (1999).

2. Plaintiff objects to Defendant's proposed verdict outline regarding Claim 2: Title IX Retaliation. Defendant incorrectly asserts that Plaintiff must prove that SWOCC retaliated against her because she engaged in a protected activity under Title IX. This language heightens Plaintiff's burden unfairly. The correct legal standard is that Plaintiff engaged in a protected activity, she suffered an adverse action, and that there is a "causal link" between the protected activity in which she was engaged and the adverse action she suffered. "Causal link" within the 9<sup>th</sup> Circuit is "construed broadly so that a plaintiff merely has to prove that the protected activity and the negative action are not completely unrelated." *Emeldi v. Univ. of Or.*, 673 F.3d 1218, 1226 (9th Cir. 2012). Defendant incorrectly places a burden upon Plaintiff of demonstrating that the adverse action was "because of" her protected activity; the jury will likely interpret Plaintiff's burden as having to demonstrate that the protected activity in which she engaged was the sole cause of the adverse action taken by SWOCC. This is unsupported by caselaw and incorrectly heightens Plaintiff's burden.
3. Plaintiff does not object to Defendant's Damages section under the Title IX claims, nor its Claim 3: Breach of Contract.
4. Plaintiff objects to Defendant's omission of Plaintiff's Title IX—Selective Enforcement Claim. Case law supports Plaintiff's Selective Enforcement claim. "A selective enforcement claim asserts that a school decided to discipline a student or decided on certain penalties based on the student's gender." *Yusuf v. Vassar College*, 35 F.3d 709, 715 (2d

Cir. 1994); *Doe v. Regents of the Univ. of Cal.*, No. 2:15-cv-02478-SVW-JEM, 2015 U.S. Dist. LEXIS 194179, at \*10 (C.D. Cal. Dec. 14, 2015).

DATED this 3rd day of May 2022.

/s/ Michael W. Young  
Brandon J. Mark (OSB No. 041613)  
Michael W. Young (admitted pro hac vice)  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served the foregoing **OBJECTIONS TO DEFENDANT SOUTHWESTERN OREGON COMMUNITY COLLEGE'S PROPOSED VERDICT FORM** on the date indicated below,

☒ Via Email  
☒ Via Electronic Filing  
☐ Via Facsimile Transmission  
☐ Via Hand Delivery  
☐ Via Overnight Delivery

to the following person(s) a true copy thereof, contained in a sealed envelope (if other than by facsimile transmission), addressed to said person(s) at their last known addresses indicated below:

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Of Attorneys for Defendant

DATED this 3rd day of May, 2022.

PARSONS BEHLE & LATIMER

*s/ Michael W. Young*

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